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Supreme Court, U.S.
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SUPREME COURT OF THE UNITED STATES

SUSAN M. MORLEY

Petitioner,

V.

ROBERT A. BRADY, HOLLY J. FORD, JON MARSHALL, GEORGE J. SPARTA, and DEMOCRATIC CITY COMMITTEE

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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AMENDED PETITION FOR A WRIT OF CERTIORARI

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32 pp

QUESTIONS PRESENTED

Are candidates for public office federally protected?

Did defendants conspire to deprive Morley of her civil right to be a candidate and abuse civil procedure in the process?

Were the lower Federal Courts politically influenced to dismiss this case?

PARTIES TO THE PROCEEDING

Susan M. Morley, petitioner, pro se is a citizen of Pennsylvania and a past candidate for the office of Judge of Election. Judge of Election is responsible for the conduct at polling places on election day.

The respondent Robert A. Brady is a United States Congressman and Chairman of the Democratic City Committee, Holly J. Ford is a Philadelphia attorney and counsel to the Committee, Jon Marshall is a Philadelphia attorney and counsel to the committee, George Sparta is a United States Department of the Treasury employee and the Democratic City Committee is a political entity representing the Democratic Party in the City of Philadelphia.

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STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C subsection 1254. The Third Circuit denied a petition for en banc rehearing on **August 30, 2002.**

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Ninth Amendment to the United States Constitution states:

> The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

18 U.S.C. subsection 245 **Federally protected activities** includes anyone "qualifying or campaigning as a candidate for elective office".

STATEMENT OF THE CASE

On September 4, 2001 Morley filed a complaint in the United States District Court for the Eastern District of Pennsylvania, Case Number 01-CV-4484. Morley alleged that defendants conspired to deprive her of her civil right to be a candidate for the public office of Judge of Election (42 U.S.C. subsections 1983 and 1985) and abused civil proceedings in the process (42 Pa.C.S.A. subsection 8351). On November 9, 2001 the District Court dismissed Morley's Complaint. On July 12, 2002 the United States Court of Appeals for the Third Circuit, Case Number 01-4146 affirmed the dismissal. On August 30, 2002 a Petition for Rehearing was denied.

STATEMENT OF FACTS

Morley was a candidate for the office

of Judge of Election in the 2nd ward, 24th division of the City of Philadelphia ("Office").

Sparta was the only other candidate for the office.

On March 13, 2001 Sparta filed a Petition to Set Aside (Morley's) Nomination Petition in the Court of Common Pleas Philadelphia County ("Court"). Despite the fact that Sparta's objections to signatures lacked probable cause and Pennsylvania Courts have long permitted amendments to candidate oaths and affidavits, the suit alleged that Morley's Nomination Petition "fails to conform to the requirements of the Election Code". Sparta's set aside petition requested the Court to remove Morley's name from the ballot.

Sparta was represented in this action

by Ford and Marshall.

On March 15, 2001, at a hearing on Sparta's set aside petition, Sparta withdrew his objections to the signatures on Morley's Nomination Petition, the Court granted Morley leave to amend the Affidavits and Loyalty oaths of her Nomination Petition and the Court denied the relief requested by Sparta.

On May 15, 2001 Sparta won the primary election for the office.

On May 16, 2001 Morley learned and confirmed that Sparta works for the United States Department of the Treasury ("U.S. Mint").

The Pennsylvania Election Code ("Code"), 25 P.S. sub section 2672 prohibits government workers acting as election officials.

On May 23, 2001 Morley filed a

petition to Set Aside Democratic Nomination (of Sparta) in the Court. Morley requested the Court to remove Sparta as the democratic nominee and certify Morley, **the only legal candidate**, as the democratic nominee.

On June 7, 2001 Sparta admitted in open court that he worked for the U.S. Mint and **involuntarily** withdrew his nomination.

On June 7, 2001 the court ignored the relief sought by Morley, declared a "vacancy" for the democratic candidate for the office of Judge of Election in the 2nd ward, 24th division and ordered the Committee to fill said "vacancy".

On June 7, 2001 John H. Morley, Jr., Morley's husband, demanded that the Committee name Morley as the democratic nominee.

The Committee failed to name Morley as the democratic nominee for the office.

Morley, the only legal democratic candidate for said office was deprived the right to be a candidate in the November 2001 General Election.

REASONS FOR GRANTING THE WRIT

SUMMARY OF ARGUMENT

The District Court erred in concluding that Morley's complaint is barred by the *Rooker-Feldman Doctrine* in that Morley sought review of a state court order and that this case is inextricably intertwined with a state court decision. In state court, Morley sought the equitable relief of being certified the democratic nominee for Judge of Election. In federal court, Morley seeks the award of punitive damages arising from the conspiracy to deprive her

civil right to be a candidate.

The Third Circuit agreed with Morley that her claim was not barred by the *Rooker-Feldman Doctrine* but erred by *sua sponte*, dismissing the Complaint for lack of specificity.

ARGUMENT

A. Plaintiff does not seek review of state court therefore this case is not inextricably intertwined with state court decision

In this case Morley does not request the federal court to review a state court decision.

In state court Morley sought the **equitable** relief of being certified the democratic nominee for Judge of Election in the 2nd Ward, 24th division of the City of Philadelphia. "A subsection 1983 plaintiff is not required to exhaust state administrative or legal remedies before

proceeding to Court.", see *Middlebrook v. Coughlin*. This court affirmed that "[p]erson with Federal Civil Rights Act claim has no duty to exercise state remedies before pursuing his or her claim in federal court" see *Marks v Stinson*.

In federal court Morley seeks the award of **punitive** damages resulting from the defendants a) conspiracy to deprive her of the right to be a candidate for public office, b) the conspiracy to deprive the electors the right to nominate a candidate and c) the abuse of civil proceedings in the conspiracy to deprive civil rights. The federal action is a **completely original** action therefore the *Rooker-Feldman* doctrine does not apply.

Under the color of law, as required by *Verney v. Pennsylvania Turnpike Com'n*, the defendants conspired to deprive Morley her

right to be a candidate and conspired to deprive the elector's their right to nominate a candidate. The defendants a) fielded an illegal candidate, George Sparta, b) filed a frivolous legal action against Morley, the March 2001 set aside petition, in George Sparta's name c) vigorously defended the illegal candidate, George Sparta, despite unambiguous federal and state law that prohibits government employees from being election officials and d) failed to certify Morley, **the only legal candidate**, as the democratic nominee.

The right to be a candidate and the right to nominate a candidate are federally protected activities. 18 U.S.C subsection 245 protects anyone "**qualifying** or campaigning as a candidate for elective office". In *Turner v. Fouche* the United

States Supreme Court affirmed the federally protected right to be a candidate. In *McKinney v. Kaminsky* a district court further affirmed the federally protected right to be a candidate.

Although the court does not need animus to sustain this civil rights action, animus in fact exists in this case.

Election officials (Judge, Majority Inspector, Minority Inspector, Machine Inspector, etc.) are the individuals who perpetrate election day vote fraud and therefore control the vote. If Morley had become the Judge of Election, with election day authority that overrules that of the various Inspectors, vote fraud ends and the defendants lose control of the vote in the 2nd Ward, 24th Division of the City of Philadelphia.

B. State court was a co-conspirator.

The Pennsylvania Election Code, 25 P.S. subsection 2939 allows a political party to substitute a nomination when "Any vacancy happening or existing after the date of the primary in any party nomination, by reason of **death** or **withdrawal** of any candidate after nomination,". George Sparta did not die. George Sparta did not voluntarily withdraw his nomination. **Only after** Morley filed suit and **only after** the Court compelled his appearance did George Sparta admit his employment with the U.S. Mint and **involuntarily** withdraw his nomination. Morley was the only legal democratic candidate for this office, therefore the state court erred by a) accepting Sparta's involuntary withdrawal, b) failing to certify Morley the democratic nominee for

the office, and c) ordering the democratic party to substitute a nomination for the Office. Morley did not seek an appeal of the state court decision because political influences would have made the appeal a fruitless exercise.

C. The decision conflicts with other Third Circuit decisions.

The panel's decision in this case conflicts with other Third Circuit decisions including the case cited in their Opinion. In *Darr v. Wolfe* the Circuit Court stated "Under the circumstances we think that the plaintiff should be given the opportunity to amend his compliant so as to provide, if he can, the missing factual specificity." In *Darr* the Circuit Court remanded to afford the plaintiff an opportunity to file an Amended Complaint.

In this case the Circuit Court agreed

with Morley that the *Rooker-Feldman Doctrine* does not bar the Complaint. The issue of specificity was not raised by the defendants or the District Court The Complaint clearly states that the defendants conspired to deprive Morley of her civil right to be a candidate by a) fielding an illegal candidate, George Sparta, b) filing a frivolous legal action against Morley, c) vigorously defending the illegal candidate, George Sparta despite unambiguous federal and state law that prohibits government employees from being election officials and d) refusing to certify Morley, the only legal candidate, as the democratic nominee. In addition Morley provided the Circuit Court and the defendants the Notes of Testimony regarding the three states court proceedings that gave rise to the federal

action, Appendix, Volume 3.

The questionable issue of specificity was raised for the first time by the Third Circuit panel for the sole purpose of improperly ending this case. If the panel truly believed that specificity is at issue the panel should have been consistent with other Third Circuit decisions and it should have remanded for the filing of an Amended Complaint.

Furthermore, Morley's complaint was specific enough for the defendants to argue the *Rooker-Feldman Doctrine* but not specific enough to defend?

D. The decision conflicts with the United States Supreme Court decisions and this proceeding involves a question of exceptional importance. Are candidates for public office subject to federal protection?

Being a candidate for public office is a federally protected activity

confirmed by Supreme Court decisions, see *Turner v. Fouche*. Regardless of the stated reason to affirm the District Court, the panel has declared that candidates for public office do not enjoy federal protection.

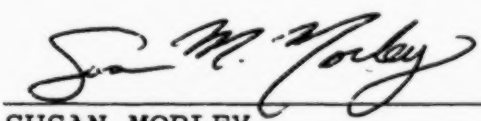
E. The panel should have removed the appearance of impropriety and Judge Rendell should have recused herself from the panel.

Defendant Brady is the Chairman of the City Democratic Committee and has publicly endorsed Gubernatorial candidate Ed Rendell. Ed Rendell is married to a panel Judge in this matter, Marjorie O. Rendell. Judge Rendell should have recused herself from this matter especially considering the fact that the panel created, *sua sponte*, a completely new objection to Morley's Complaint to which Morley was deprived the opportunity to brief.

CONCLUSION

For all of the foregoing reasons, Susan M. Morley, petitioner, pro se respectfully requests this Court to reverse the decisions of the lower federal Courts and remand this case, to the District Court, for further proceedings with respect to all counts alleged in the Complaint.

DATE: September 30, 2002



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APPENDIX

On November 14, 2001 the United States District Court for the Eastern District of Pennsylvania, Judge Eduardo C. Robreno entered an order and footnote that stated **AND NOW**, this **9th** day of **November, 2001**, following a hearing on defendant's Motion to Dismiss (doc no. 7) held on November 8, 2001, it is hereby **ORDERED** that said motion is **GRANTED** and this case is **DISMISSED** without prejudice for lack of subject matter jurisdiction. 1

1. The Rooker-Feldman doctrine "preclud[es] lower federal court jurisdiction over claims that were actually litigated or inextricably intertwined with adjudication by a state's courts." Parkview Associates Partnership v. City of Lebanon, 225 F.3d 321, 325 (3d Cir. 2000) (quotations omitted). [A] federal action is inextricably intertwined with a state adjudication, and thus barred in federal court under Feldman, "[w]here federal relief can only be predicated upon a conviction that the state court was wrong." Id (quoting Centifanti v. Nix, 865 F.2d 1422, 1430 (3d Cir. 1989).

In the instant case, plaintiff seeks review of a state court decision refusing

to name her to a vacancy on a campaign ballot in the general election for a position of Judge of Election when the candidate who was successful in the primary withdrew his candidacy after the state court determined that he would be ineligible for the position. Since the relief sought by plaintiff effectively would constitute a review of a state court decision, a lower federal court is without subject matter jurisdiction to entertain the action.

On July 12, 2002 the United States Court of Appeals for the Third Circuit, before Rendell, Aldisert and Greenberg filed an opinion that stated "In September 2001 Susan Morley filed a civil rights action arising out of her candidacy for the office of Judge of Election in the Second Ward, Twenty-fourth Division, Philadelphia. in her complaint she alleges that in March 2001 her rival candidate, defendant Sparta, filed a petition to set aside her nomination in the Court of Common pleas, Philadelphia County. The Court ordered that unless

timely amendments corrected the defects in Morley's nomination petition, it would set aside the petition. Morley corrected the defects, ran against Sparta in the May 15, 2001 primary, and lost. Shortly thereafter, Morley learned that Sparta works for the United States Department of the Treasury and filed a petition to set aside his nomination because the Pennsylvania Election Code prohibits government workers from acting as election officials; Morley asked the court to certify herself as the Democratic nominee. Sparta admitted at a subsequent hearing that he worked for the Mint and withdrew his nomination, but the court did not grant the relief sought by Morley. Instead, it declared a "vacancy" for the for the Democratic candidate and ordered defendant Democratic City Committee to

fill the vacancy pursuant to state law Morley's husband then wrote a letter to the Democratic City Committee stating that Morley should be the substituted candidate, and that if the Committee did not choose Morley she would file a lawsuit in federal court. The Committee did not do so and this action followed. According to Morley, the defendants conspired to deprive her of her civil right to be a candidate for public office and abused civil proceedings in the process. She seeks, inter alia, punitive damages.

The defendants moved to dismiss, arguing that Morley's complaint effectively seeks review of a state court decision and is thus barred by the Rooker-Feldman doctrine and that Morley fails to state a claim. After a hearing, the district court agreed that it lacked

jurisdiction pursuant to Rooker-Feldman and dismissed the complaint without prejudice because the complaint effectively seeks review of a state court decision refusing to name Morley to the vacancy created by Sparta's withdrawal. The court also indicated at the hearing that it did not believe Morley had stated a claim, in part because she was a candidate in the election.

I

On appeal Morley argues that her case is not barred by Rooker-Feldman because in state court she sought equitable relief: certification as the democratic nominee for the position of Judge of Election. Here, by contrast, she seeks damages arising out of a conspiracy to deprive her of her civil right to be a candidate She states that she does not seek review of

the state court decision but nevertheless argues that the state court decision was wrong.

Based on the record before us, we agree with Morley that her complaint is not barred by the Rooker-Feldman doctrine.1 That doctrine "preclud[es] lower federal court jurisdiction over claims that were actually litigated or 'inextricably intertwined' with adjudication by a state's courts." Parkview Associates Partnership v. City of Lebanon, 225 F.3d 321, 325 (3d Cir. 2000) A federal action is "inextricably intertwined" "[w]here federal relief can only be predicated upon a conviction that

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1 It is true that Morley challenges the correctness of the state court decision in her brief on appeal. However, her complaint does not appear to present such a challenge. To the extent it does, the challenge is barred by Rooker-Feldman.

the state court was wrong." Centifanti v Nix, 865 F.2d 1422, 1430 (3d Cir 1989).

Neither test bars Morley's complaint. It appears from the record that the state court was not asked to address whether the defendants here conspired to deny Morley her right to be a candidate and abused civil proceedings to do so. Rather, she merely sought to be certified as the Democratic nominee in light of Sparta's status as an employee of the Mint. Accordingly, the pertinent state court order merely states; "George Sparta having withdrawn his name from nomination...a vacancy is declared for Democratic candidate for Judge of Election....Such vacancy shall be filled pursuant to procedures set forth in 25 P.S. subsection 2939." The order says nothing about the conduct of the defendants. For these reasons, based on

the record before us we cannot conclude that the claims in Morley's complaint were "actually litigated in state court.

Nor were they "inextricably intertwined." Whether the state court was correct not to declare Morley the Democratic candidate following Sparta's withdrawal is a completely separate question from whether the defendants conspired to violate Morley's rights; answering the latter question does not entail review, express or implied, of the state court's decision.

However, although we agree with Morley that Rooker-Feldman does not bar her complaint, we agree with the appellees that the complaint fails to state a claim. "[I]t is settled in this circuit that a civil rights complaint under subsection

1983 must set forth with factual specificity the conduct of the defendants alleged to have harmed the plaintiff." Darr v. Wolfe, 767 F.2d 79, 80 (3d Cir 1985). Aside from the fact that Morley *did* run as a candidate against Sparta, her complaint is devoid of specific factual allegations supporting the contention that the defendants conspired to do , or indeed did, anything illegal or otherwise wrong, either before or after Sparta's withdrawal.

Accordingly, we shall affirm the order of the district court.

On August 30, 2002 the United States Court of Appeals for the Third Circuit entered an order that stated " The petition for rehearing filed by appellant having been submitted to all judges who participated in the decision of this

court, and to all other available circuit judges in active service, and no judge who concurred in the decision having asked for rehearing and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is hereby DENIED.